



# Public Utility Commission of Texas

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Web Site: [www.puc.state.tx.us](http://www.puc.state.tx.us)

Pat Wood, III  
Chairman

Judy Walsh  
Commissioner

Patricia A. Curran  
Commissioner

June 25, 1998

DOCKET FILE COPY ORIGINAL

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
1919 M. Street, N.W., Room 222  
Washington, D.C. 20554

RECEIVED

JUL 7 1998

FCC MAIL ROOM

RE: CC Docket No. 98-91  
In the Matter of  
Southwestern Bell Telephone Company,  
Pacific Bell, and Nevada Bell Petition  
for Relief from Regulation Pursuant to  
Section 706 of the Telecommunications  
Act and 47 U.S.C. § 160 for ADSL  
Infrastructure and Service, DA 98-1111

To Ms. Salas:

Enclosed herewith for filing with the Commission are an original plus five copies of the Comments of the Public Utility Commission of Texas in the above captioned matter. We are also providing copies to SBC, Inc.

Sincerely,

Stephen J. Davis  
Chief  
Office of Policy Development

cc: SBC, Inc.

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Southwestern Bell Telephone Company,	)	
Pacific Bell, and Nevada Bell Petition	)	CC Docket No. 98-91
for Relief from Regulation Pursuant to	)	
Section 706 of the Telecommunications	)	DA-98-1111
and 47 U.S.C. § 160 for ADSL	)	
Infrastructure and Service	)	

**MOTION TO ACCEPT LATE-FILED  
COMMENTS OF THE  
PUBLIC UTILITY COMMISSION OF TEXAS**

In its Public Notice dated June 11, 1998 (DA 98-1111) in this proceeding, the Commission requested comments on the petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell (collectively referred to as SBC) for regulatory forbearance relating to asynchronous digital subscriber loop (ASDL). The deadline for filing comments in response to the Public Notice is June 24, 1998, nine working days from the date of the Public Notice's release. During a portion of this same nine days, members and staff of the Public Utility Commission of Texas have been involved in a variety of proceedings. Further, our only scheduled Open Meeting following the release of the Public Notice at which we have been able to adopt Comments was this date, June 24, 1998. We therefore request your consideration of the attached Comments in this proceeding.

**RECEIVED**  
**JUL 7 1998**  
**FCC MAIL ROOM**

Respectfully submitted,

Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

June 26, 1998

A handwritten signature in dark ink, appearing to read "Stephen J. Davis", written over a horizontal line.

Stephen J. Davis  
Chief, Office of Policy Development

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Southwestern Bell Telephone Company,	)	
Pacific Bell, and Nevada Bell Petition	)	CC Docket No. 98-91
for Relief from Regulation Pursuant to	)	
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and 47 U.S.C. § 160 for ADSL	)	
Infrastructure and Service	)	

**COMMENTS OF THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ON THE COMMISSION'S REQUEST FOR COMMENTS ON PETITION**

**Introduction**

In DA-98-1111, "In the Matter of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell<sup>1</sup> Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service," the Federal Communications Commission (FCC) seeks comment regarding the petition's request for regulatory forbearance under the federal Telecommunication Act of 1996 (FTA) Section 706 from the following statutory obligations as they relate to asynchronous digital subscriber loop service:

1. Any unbundling obligation imposed by FTA § 251(c)(3),
2. Application of any applicable wholesale discounts,
3. Dominant treatment as to ADSL services, and
4. Application of the FTA's most favored nation (MFN) provision to provisions in existing agreements where the FCC determines regulatory forbearance is appropriate.

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<sup>1</sup> Collectively referred to as SBC.

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**JUL 7 1998**

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As these comments state, although the Public Utility Commission of Texas (PUCT) believes that policy issues relating to the development of new technologies must be addressed in light of the obligations placed on incumbent local exchange companies (ILECs) in FTA § 251, the relief sought by SBC would be inappropriate at this time because competition in the local exchange markets remains in the early stages.

### **PUCT's Continuing Interest With These Issues**

The PUCT has allocated extensive time and resources toward creating an environment in which competition can thrive. These activities include, but are not limited to, extensive arbitration proceedings, evaluation of Southwestern Bell Telephone Company's § 271 application, and universal service reform. It is in the PUCT's interest to see competition develop where the economic fundamentals support it. It is also in the PUCT's interest to oversee the development of a first-class, unsurpassed telecommunications infrastructure. It is with these two interests in mind that the PUCT offers these comments.

### **Existence of High-speed Data Competition**

SBC's petition argues that forbearance is appropriate, in part, because of the high level of high-speed data competition; however, such competition is in its infancy. For example, SBC does not cite to a single city in the State of Texas where cable modem access is currently available. SBC does not discuss the percentage of residential or

business customers that subscribe to cable modem service, satellite-based Internet access, or ADSL service from competitors. Before forbearance of any kind is appropriate, SBC must be able to show that the benefits to such forbearance outweigh any potential harm to developing competitive markets. Because SBC does not attempt to discuss the current state of competition, SBC's petition is deficient in this regard.

Second, although SBC's petition discusses the existence of high-speed data competition in urban areas to support its request, SBC also notes its interest "in providing ADSL in areas not already service by existing ADSL providers."<sup>2</sup> SBC neither explains why its request for forbearance is appropriate in areas where comparable competition does not exist, nor demonstrates that the requested forbearance will enhance the telecommunications infrastructure in such areas. One of the PUCT's highest obligations is the development of an environment in which the telecommunications infrastructure in Texas can support the needs of Texans in the 21<sup>st</sup> Century. SBC's petition, while attempting to expand high-speed data capabilities, may retard the development of the telecommunications infrastructure by stifling the development of competition in vast portions of this state. Until competitive markets reach a basic level of maturity, requests for forbearance should be scrutinized closely.<sup>3</sup> Moreover, to the extent that SBC supports

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<sup>2</sup> SBC Petition at 36.

<sup>3</sup> SBC argues that the relief it requests is in the public interest; however, it is not enough for SBC to show that the development of new technologies is in the public interest in isolation. Instead SBC must show that the benefits created by the proliferation of new technologies outweighs the benefits Congress intended to confer on the public when it enacted FTA § 251.

forbearance by referring to existing levels of competition, any relief granted should be narrowly tailored to the evidence provided.<sup>4</sup>

### **Intrastate Nature of ADSL Data Traffic**

In its petition, SBC contends that data traffic carried by ADSL, which is directed to the customer's Internet service provided (ISP), is interstate in nature. The PUCT has determined that traffic from an end user to an ISP is local traffic when the ISP is located within the same exchange. That decision was upheld by the Federal District Court for the Western District of Texas.<sup>5</sup> Based on these holdings, SBC's position that such traffic is interstate should be rejected and no decision relating to forbearance should rely on that contention.

### **Use of ADSL to Retard Competition in Voice-grade Telephony**

ADSL is unique because a customer has access to data channels and voice-grade service. Although technologies enhancing the networks capabilities should be supported,

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<sup>4</sup> To place SBC's petition in context, it would be helpful to briefly discuss the implementation of new technologies prior to the FTA. Such a comparison is appropriate because it demonstrates the benefits of FTA § 251 and why petitions for forbearance should only be granted when convincingly supported. As integrated digital subscriber network (ISDN) technology became available, SWBT did not voluntarily provide that service. Instead, the PUCT found it necessary to pass a prescriptive rule mandating the deployment of ISDN into urban and rural areas. SWBT was not inclined to take any risks associated with deploying that new technology because it was not subjected to competitive pressures in its local markets. With the competitive pressures created by the FTA, SBC appears willing to take the risks necessary to develop ADSL. In its petition, however, SBC seeks forbearance from the very provisions that are allowing that local competition to start developing.

<sup>5</sup> *Southwestern Bell Telephone Company v. Public Utility Commission of Texas*, Case No. MO 98 CA 043 (June 16, 1998). Moreover, decisions made by the FCC pursuant to FTA § 706 should not impair a state commission's ability to foster competition pursuant to FTA § 252.

given the early stages of local exchange competition, regulatory forbearance as to ADSL should be strictly scrutinized because ADSL directly competes with the voice-grade services provided by competing carriers. For example, if an avoided-cost discount does not apply to ADSL, SBC may position ADSL in a manner that customers will choose SBC's ADSL service over a competitor's voice-grade service since the competitor may not be able to effectively offer ADSL without an avoided-cost discount.<sup>6</sup>

### **Steps Taken by the PUCT to Address Issues Relating to New Technologies**

The PUCT has initiated a project to investigate the treatment of technological developments in light of the potentially conflicting goals of jump-starting sustainable competition and encouraging the development of new technologies. In that project, the PUCT will investigate issues such as calculation of the avoided cost discount for new technologies, the extent unbundling requirements should be applied when new technologies are developed, and how particular characteristics of a new technology may affect regulatory treatment. That project should also entertain other creative ideas for addressing these issues.<sup>7</sup> In spite of the fact that the PUCT believes SBC's petition should be rejected at this time, the PUCT agrees that regulation must not only create a level playing field in which competition may thrive, but must also provide the necessary incentives to incumbents and competitors to assure the development of new technologies

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<sup>6</sup> Moreover, if costs are avoided by SBC but no avoided cost discount is offered, competitors would be, in effect, subsidizing SBC's entry into new service offerings if they choose to resell such new service offerings.

<sup>7</sup> It is the Commission's intention to develop policy statements on these issues that can guide the decision-making process in future arbitrations.



that will better the lives of the public.


## **Conclusion**

The PUCT appreciates the opportunity to comment on this petition before the FCC. The PUCT believes that technological innovation is crucial to the public welfare and the competitiveness of the State of Texas. However, the larger principles of the FTA, *e.g.* bringing the benefits of competition to the public, must not be forgotten when faced with a petition that only focuses on the benefits of technological improvements to the telecommunications infrastructure. The FCC should remain open to Section 706 forbearance petitions that do not frustrate the intended effect of FTA § 251. On the other hand, when a petitioning party wishes to restrict the very same provisions that were deemed by Congress as necessary to open local markets, the FCC should be cautious. This is especially true during the early stages of the competitive market's development. As the PUCT's experience with this issue expands, the PUCT will supplement these comments accordingly.

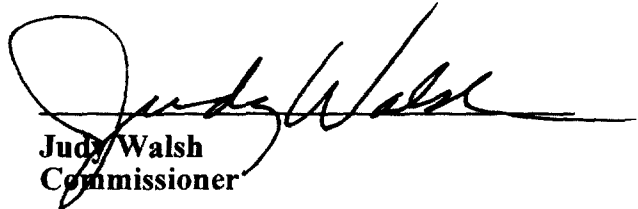
**Respectfully submitted,**

**Public Utility Commission of Texas  
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Austin, Texas 78711-3326**

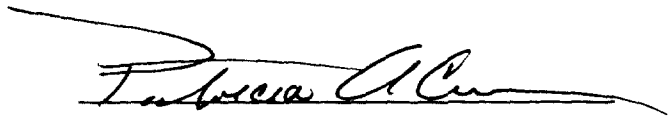
**June 25, 1998**



**Pat Wood, III  
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